

REMARKS/ARGUMENTS

Claims 32-45 are pending in the application. Claim 45 has been withdrawn by the Examiner and Applicant states Claim 45 is hereby cancelled. No new matter has been added. Reconsideration of the claims is respectfully requested.

The examiner assigned to this case has changed and there appears to have been a loss of communication since the last interview (conducted with the previous examiner).

In response to the interview, applicant submitted arguments and amendments over the prior rejection.

The current office action rejects the claims solely on the basis of the MacWilliams et al. reference (US Patent No. 6385860) which is commonly owned by the assignee of this case.

The current rejection is under 35 USC sec 102 (f) . All other rejections having already been overcome or withdrawn.

This rejection under sec 102(f) is applicable at least because the CREATE Act 35 USC sec 103c disqualifies MacWilliams as prior art.

See below:

35 U.S.C. 103 Conditions of patentability; non-obvious subject matter.

(c) (1) Subject matter developed by another person, which qualifies as prior art only under one or more of subsections (e), (f), and (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the claimed invention was made, owned by the same person or subject to an obligation of assignment to the same person.

In the previous response, documentation showing that the same person (Smead Manufacturing Company) owned the claimed invention and the cited reference (MacWilliams). This submission has not been objected to.

The purpose of 35 USC sec 103c was, in fact, to address this specific situation, where an assignee's own prior applications could undermine a later application even if inventorship was not identical. The amendment to sec 103 eliminated this basis for rejection.

It is believed that, with this information, the new (current) examiner can withdraw the sec 102f rejection and allow the case under sec 103c. As no objection was raised to the evidence submitted in the prior response with respect to common ownership (as none should have been made), therefore if any further rejection is issued by the Office, it must be made **NON** final as it should have been raised in the last office action.

It is submitted that the prior office action was unnecessary and the case should have received a notice of allowability subject to the *cancellation* of claim 45, which was withdraw.

Early allowance is respectfully requested.

If a telephone conference would be helpful in resolving any issues concerning this communication, please contact Applicant's attorney of record, Michael B. Lasky at (612) 436-3152.

Respectfully submitted,
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